

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO : 22461 of 1998

Between:

Shaik Akbar S/o Silar, Muslim
R/o Mosque Street Sullurpeta, Sullurpeta Mandal
Nellore District.

..... PETITIONER

AND

- 1 The District Collector,
Nellore.
- 2 The Mandal Revenue Officer,
Sullurpeta Mandal, Nellore.
- 3 The Revenue Divisional Officer,
Gudur, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of Mandamus or any other appropriate writ or direction declaring the order of the 3rd Respondent passed in Rc.NO.A/4041/98 dt: 2-7-98 and as illegal, arbitrary and violative of Principles of Natural Justice and consequently direction to the respondents to pay compensation to the petitioner forthwith for the petitioner's land to an extent of Acres 0.23 cents by way of Acres 0.18 cents in S.No.45/58 and 0.5 cents in S.No.45/5D in Sullur Village, Sullurpeta Mandal, Nellore District forthwith.

Counsel for the Petitioner :Mr.T.RAJENDRA PRASAD

Counsel for the Respondents : GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

Declaring the order of the 3rd respondent passed in Rc.No.A.4041/98 dated 2-7-98 as illegal, arbitrary and violative of principles of natural justice and for a consequential direction to the respondents to pay compensation to the petitioner forthwith for the petitioner's land to an extent of Acs.0.23 cents i.e., Acs.0.18 cents in S.No.45/5B and Acs.0.5 cents in S.No.45/5D in Sullur village, Sullurpeta Mandal, Nellore District, the present writ petition is filed.

The case of the petitioner is that his grand father owned an extent of Ac.0.75 cents of land in Patta No. 142, Survey No.45/2, 45/5B and 45/5D in Sullur village, Sullurpeta Mandal, Nellore district and he was in continuous possession and enjoyment of the said land during his life time. According to the petitioner, the name of his grand father was mutated in revenue records and they also clearly establish the title and possession of his grand father. Subsequently vide proceedings of Board of Revenue (SE) Andhra State dt.16-11-1953 ryotwari patta was also granted in favour of his grand father. Be that as it may in the year 1968, Land Acquisition Proceedings were initiated and accordingly 4(1) notification was published acquiring an extent of Ac.4.00 cents excluding this particular piece of land in an extent of Ac.0.23 cents on the ground that the said land is used by public as a passage and cart track. Thereafter, an award was also passed, paying compensation to those patta holders whose lands were acquired after conducting enquiry. But the petitioner was not paid any compensation, as this piece of land was excluded from the land acquisition proceedings. Though he made several representations, the authorities have not responded. But, however, they issued a notice on 14-3-1996 asking him to appear before the Special Tahsildar, Land Acquisition, for the purpose of holding an enquiry. Though the petitioner appeared before the concerned authority, no enquiry could take place in view of the fact that the then Special Tahsildar was transferred and he was informed about the date of the enquiry. As nothing was informed he was constrained to approach the authorities and

gave a representation again on 28-4-1987 requesting the authorities to pay him compensation. As no compensation was paid, he was constrained to move this court by way of filing writ petition No.15602/98 and he also moved M.P.No.15619/1998 and this court by its order dated

15-6-98 directed the authorities to consider the representation of the petitioner dated 28-4-1987. Pursuant to the said order, the Revenue Divisional Officer, Gudur, by his proceedings dated 2-7-98 stated that the petitioners land is excluded from the purview of Land Acquisition proceedings as it is treated as a passage by the formers and other public and if he has any objection, he may approach the civil court by way of reference under Section 18 of the Land Acquisition Act. As against the said endorsement dated 02-07-1998, the present writ petition was filed.

Heard the learned counsel appearing for the petitioner Mr. Rajendra Prasad and also the Assistant Government Pleader.

On perusal of the counter, it is clear that the notification was published in the year 1968 and an award was also passed on 26-2-1971 paying compensation to the landholders. The land of the petitioner to an extent of Ac.0.23cts was also ought to have been included in the said Land acquisition proceedings. However, the fact is that the same is used as a passage, it was not included in the said land acquisition proceedings. Even though, the land belonged to the petitioner and his grand father used since times immemorial as a pathway and cart track, it does not mean that the petitioner is not entitled to any compensation. In fact in one of the proceedings issued by the Special Tahsildar, Land Acquisition in his RC.No.A(116)96 dated 14-3-1996 it is clearly mentioned that for laying of road for Bapuji Colony, the land of the petitioner was acquired, but no compensation was paid to him so far. From this it can be inferred that the land of the petitioner was also acquired. The contention put forth by the petitioner that the petitioner's grand father was in possession and enjoyment of the land during his lifetime and a ryotwari patta was also issued vide proceedings of the Board of Revenue (SE) Andhra State dt.16-11-1953 is not controverted by the Government in their counter. In those circumstances, it shall be inferred that the petitioner is the absolute owner of the lands and he is entitled to get compensation on par with others. Simply because this piece of land is used as a cart track or path way, it cannot be said that the petitioner

cannot be paid compensation or he has to approach the Civil Court by a reference under Section 18 of the Land Acquisition Act. When once it is established by the petitioner and not contraverted by the respondent that the petitioner is the owner of the land, and he is deprived of the said land, definitely it is hit by Article 300(A) of the Constitution as it envisages that no person shall be deprived of his property saved by authority of law. Hence this court is of the view that the petitioner is also entitled to compensation on par with others whose lands were acquired by the notification and the compensation shall be paid as per the award dated 26-2-1971.

Accordingly, this writ petition is allowed.

17..03..2005.

rns

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Seventeenth day of March Two thousand and five.

REGISTRAR

To

- 1 The District Collector,
Nellore.
- 2 The Mandal Revenue Officer,
Sullurpeta Mandal, Nellore.

3 The Revenue Divisional Officer,
Gudur, Nellore District.

4 Two CCs to G.P.for Land Acquisition,
High Court buildings, High Court of A.P.,
HYDERABAD(OUT).

5 Two CD copies.